IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

S.B. CIVIL SECOND APPEAL NO.771/2007
Ahmed Khan Vs. Dargah Committee, Ajmer.

29.10.2007.

HON'BLE MR. JUSTICE DALIP SINGH

Shri Reashm Bhargava, for the appellant.

Learned counsel for the appellant has contended that the appellant has no interest in the property and he was wrongly impleaded as party defendant in the suit for eviction.

I have heard learned counsel for the appellant and perused the judgments of both the courts below. The two courts below while deciding issues No. 1 and 2 which relates to the question of tenancy have found Ex.1 and rent note proved. That finding is a question of fact against the defendant appellant.

In the facts and circumstances no substantial question of law arises in this second appeal under Section 100 CPC. The second appeal is consequently dismissed summarily.

It may also be stated here that the learned counsel for the appellant frankly stated that the decree was one for eviction and the arrears of rent passed by the learned trial court. The appellant preferred the first appeal before the learned lower appellate court in which he had prayed of stay of the execution of the decree. I am of the view that if the plea of the defendant appellant was bonafide he ought to have only prayed of stay of execution relating to recovery of the arrears of rent and not for stay of the execution so far as the eviction is concerned. The appellant thus, successfully prevented the execution of the decree

for eviction passed by the learned trial court on 25.8.1998 for a period of 9 years on account of filing of the appeal and persuading the lower appellate court to grant stay against the execution of the said decree for eviction till the said appeal was dismissed vide judgment dated 23.7.2007. This appeal as well as the stay application are consequently dismissed as held above.

(DALIP SINGH),J.

Ramchandrkhatri,PS